

**Information Disclosure Statement**

The Examiner has asserted that the information disclosure statement filed January 7, 2001 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the WO document listed is not prior art (WO 01/58238).

Since WO 01/58238 may be § 102(e) art since it relies in part on USSN 60/179,057 with a priority date of 31 January 2000, applicants respectfully request that the Examiner consider this reference and return the signed form 1449 in the next office action.

**Specification**

The Examiner has asserted that the use of the trademark Glydant Plus <sup>TM</sup> should be capitalized wherever it appears and be accompanied by the generic terminology.

In response to the Examiner's kind suggestion, the specification has been amended.

**35 USC § 112**

The Examiner has rejected claims 1 - 29 under 35 U.S.C. 112, second paragraph, as being indefinite, asserting that the claims are indefinite because it is unclear if Applicant intends to claim a composition or a method of making a composition. In response, claim 1 has been amended to recite "a method".

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Amended claim 1 now provides proper antecedent basis for claims 2 - 29 previously noted by the Examiner.

The Examiner has asserted that claims 12 - 14 are indefinite because it is unclear what Applicant intends by a benefit agent. In response, Applicants respectfully point out that benefit agents benefit the skin (see specification page 6, line 30 to page 7, line 1).

**35 USC § 103**

The Examiner has rejected claims 1 - 22 and 25 - 29 under 35 U.S.C. 103(a) as being unpatentable over US 5,972,322 (322) in combination with US 5,622,692 (692).

The Examiner asserts that US'322 is directed to a system for customized hair products (title) and that the system includes preparing a hair care composition by combining separate components that are selected by the user (abstract). The Examiner further asserts that the separate components include a base composition, a thickening composition (a performance agent) and, optionally, enhancing additives (a performance agent) (abstract). For components included in the performance agents, the Examiner refers to the thickening complexes disclosed at column 4, lines 17-56, column 6, line 29 to column 7, line 2 and column 8, lines 23-42 and the enhancing additives at column 5, lines 4-24, column 7, lines 31-47 and column 9, line 14 to column 10, line 37. The Examiner asserts that each of the separate components may contain a preservative, a polyhydric alcohol or a fragrance (col. 12, lines 43 - 47), and that the separate components are combined and mixed to obtain a homogeneous mixture (col. 13, lines 52-63).

For a composition containing a solvent, a solubilizing agent and a preservative the Examiner refers to the conditioner base disclosed at column 5, line 44 to column 6, line 8. For polyethylene glycol ethers of fatty alcohols and polysorbates as solubilizing agents, the Examiner refers to column 5, lines 60-67. For the viscosity of the base compositions within the instantly claimed viscosity ranges the Examiner refers to column 3, lines 3-4, column 5, lines 36-37 and column 7, lines 58-59. For DMDM hydantoin and polyaminocarboxylic acid chelates (EDTA), the Examiner refers to column 13, lines 48-58, 66-67, Examples 9, 13, 14 and Tables 16-21 at columns 17-23.

The Examiner further asserts that at column 2, lines 34-36, US'322 teaches that the system is provided at a hair salon (a retail location) and that the compositions are packages in containers (col. 13, lines 31-34). According to the Examiner US'322 teaches various compositions containing performance agents in varying amounts (see column 4, lines 28-30 and column 9, line 26 to column 13, line 5) and that varying the amounts of the active agents is considered equivalent to providing a plurality of intensity levels as instantly claimed (claims 11 and 14).

The Examiner asserts US'322 does not explicitly teach that the vehicles of each performance agent have at least two or three ingredients in common (claims 1 and 2), a blank composition (claims 3 and 4), a label identifying the components of the formulation (claim 6), that the fragrances contain a solvent and at least one preservative in common (claim 8), a label with a code (claim 20), a machine scannable bar code (claim 21), the volume of the container (claim 22) or the angle of the container's major axis during agitation (claims 25 and 26).

The Examiner further asserts that US'322 teaches that each of the compositions may contain the same components such as water, alcohols and preservatives and that one of ordinary skill in the art would reasonably expect that using the same vehicles for each of the performance agents from each of the classes would result in similar effects and ensure compatibility of the different components.

The Examiner asserts that US'692 teaches providing a customized cosmetic composition in a container having a bar code label for identifying the customized composition (column 2, lines 63-67 and column 4, lines 31-32 and 57-63) and that it is within the skill in the art to add an inert solvent or diluent to a cosmetic composition to dilute the composition in order to achieve the desired strength or level activity of the compositions.

According to the Examiner it would have been obvious to one of ordinary skill in the art at the time of the invention to prepare the compositions of US'322 using similar vehicles in a container with bar code label as taught by US'692 with the reasonable expectation of obtaining compatibility of the separate components for specialized treatment compositions that can be identified for future use.

The Examiner has rejected claims 23 and 24 under 35 U.S.C. 103(a) as being unpatentable over US 5,972,322 (322) in combination with US 5,622,692 (692) as applied to claims 1-22 and 25-29 above, and further in view of US 4,851,062 (062).

The Examiner asserts that US'322 and US'692 teach or suggest all the limitations of the claims as stated in the 35 U.S.C. 103(a) rejection above but that they do not teach or suggest a container with a neck, a plug inserted in the

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neck and a cap (claim 23) or a container with a neck and a cap without an orifice (claim 24).

The Examiner further asserts that US'062 teaches a container for packaging cosmetic compositions that has a neck and a cap wherein the neck may be closed with a plug. See the abstract, column 1, lines 10-14, column 3, lines 39-41, 50-65 and column 4, lines 30-35 and that it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the composition of the combination of US'322 with US'692 in a container with a plug and a cap as taught by US'062 expecting to provide cosmetic compositions in container with safety disclosures for preventing contamination of the contents. Applicants respectfully traverse these rejections.

US'322 (Rath) relates to a system for combining disparate and separate components to form a customized hair care formulation where the thickener is separate from the product base and is separately added after other enhancing agent ingredients have been added (see, e.g., column 1, lines 33-40, 51-55 and column 2, lines 12-16). By way of contrast, in the system of the present invention the base composition may, where appropriate, already comprise a thickening agent (see page 5, lines 21-25). In the present invention, the base composition is prepared at a different location to the customized product, whereas in Rath a similar base composition is prepared in the same location as the customized product. Thus, Rath teaches away from this feature of the present invention.

Furthermore, there is no disclosure or suggestion in Rath where variants of a first class and of a second class of performance agents having at least two ingredients in common, wherein the first and second class of variants are dosed in a pre-determined sequence in a container to form a customized personal care

product. Rath describes a multitude of disparate enhancing agents that differ from each other to a significant extent. In contrast, the present invention allows for a variety of performance agents to be blended, or to be withheld, in which case the essential identity of the personal care product is not compromised. In contrast, in the system disclosed in Rath, all of the components are central to the formulation of a useful product. By virtue of the fact that a specific number of ingredients in the inventive performance agents are identical agents that can be selected, any number of performance agents can be combined without demonstrably changing the final characteristic of the product, such as viscosity. In Rath, the components to be combined are quite different as described above. Thus, different combinations would have quite different effects on properties such as viscosity.

Furthermore, Rath describes that the hair care system which includes a base, a thickener and separate enhancing additives is pre-packaged in the form of a kit (see column 13, lines 24-27). By specifying multi-part product kits, Rath clearly teaches that each of the component parts of the kit should be pre-selected by a person other than the consumer. The consumer is not intended to be involved in the packaging of the kits disclosed in Rath, only the possible mixing of the kit components. In contrast, in the present invention, the consumer selects, in any sequence, at least one personal care base composition, at least one variant from the first class of performance agents, and at least one variant from the second class of performance agents. Thus, in the present invention, the component parts of the product are not dictated by a pre-packaged kit selected according to the desire or whim of an unspecified person but the precise needs of the consumer. The choice of components in the kits of Rath will be limited and as a result the consumer may not be able to obtain the precise combination of components which they would like to have (see page 1, lines 22-28 in the instant specification). By providing a pre-selected kit Rath,

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therefore, teaches away from the system of the present invention in which it is the consumer who chooses the components of the product.

US Patent No. 5,622,692 and US Patent No. 4,851,062 do not remedy the deficiencies of Rath with respect to the instant invention as claimed.

In response to the Examiner's § 112 objection to the fact that performance agents could include a viscosity adjustment agent, applicants have amended claim 1 to add the limitations of claim 12 wherein the performance agent is selected from a fragrance, a colorant, and a benefit agent to make clear that the viscosity adjustment agents are not included in the definition of performance agents.

In summary by the present amendments, claim 1 has been amended and claim 12 has been cancelled. Applicants submit no new matter has been added by these amendments.

### CONCLUSION

In light of the above amendments and remarks, applicants submit that all claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested.

If a telephone interview would facilitate prosecution of the application, the Examiner is invited to contact the undersigned at the number provided.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned **"Version With Markings To Show Changes Made"**.

Respectfully submitted,

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**Version With Markings To Show Changes Made**

**IN THE SPECIFICATION:**

Add <sup>TM</sup> after each occurrence of Glydant Plus in tables 1A, B, C; 2A, B, C, E; and 3A.

Add at end of page 8, line 32:

Note:

Glydant Plus<sup>TM</sup> is a mixture of DMDM Hydantoin and Iodopropynyl Butyl carbamate and is available from Lonza, Inc. (Fairlawn, N.J.).

**IN THE CLAIMS:**

Claim 1 has been amended.

Claim 12 has been cancelled.

1. (Amended) A ~~system~~ method for providing a customized, personal care product to a consumer at a location remote from a second location in which a personal care product base composition is prepared, comprising:

- (g) providing a selection from a plurality of said personal care base compositions;
- (h) providing a selection from a plurality of variants from a first class of performance agents, each of said variants being delivered in a first vehicle, said first vehicle for each of said variants having at least two ingredients in common with each other, said first vehicle being compatible with a mixture of said personal care base composition and a second class of performance agents different from the first class;
- (i) providing a selection from a plurality of variants of said second class of a performance agents, each of said variants being delivered in a

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second vehicle, said second vehicle for each of said variants having at least two ingredients in common with each other;

- (j) permitting the consumer to select, in any sequence, said at least one personal care base composition; at least one variant from said first class of performance agents; and at least one variant from said second class of performance agents;
- (k) dosing, in a predetermined sequence, the consumer selected personal care base composition and performance agents into a container to form a personal care product; ~~and~~
- (l) mixing said personal care product until the product is uniform; wherein said first and second class of performance agents are independently selected from fragrances, colorants, benefit agents and blends thereof.

~~12. (Cancelled) The method of claim 1 wherein said performance agents are selected from a fragrance, a colorant, and a benefit agent.~~